IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.265 OF 2005

Virendranath B.Tiwari. ... Applicant.

Versus.

Smt.Chitra Anand Salunke. ... Respondent.

Shri N.R.Tiwari i/by Shri A.H.Fernandes for the Applicant.

Ms.M.M.Deshmukh, A.P.P.for the State.

CORAM : ABHAY S. OKA, J.

DATED : 17th August, 2005.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned A.P.P. for the State.

2. The challenge in this Revision Application is to the order dated 10th June 2005 passed by the learned Special Judge, Mumbai, on Application at Exh.92 filed by the Applicant, who is the original Accused.

3. The Application at Exh.92 was filed for the following relief:

> "That it is just, necessary and proper, and further in the interest of justice that this Hon'ble Court be pleased to allow the accused to put questions to the witness for admitting the said Circular or in the alternative this

Hon'ble Court be pleased to issue summons to the Controller of Examinations, University of Mumbai (Examination Section) M.J.Phule Bhavan, Vidya Nagari, Kalina, Santacruz (East), Mumbai 400 098 for production of the said circular."

4. The learned Advocate for the Applicant submitted that the Applicant had prayed in the alternative for issuance of witness summons to the Controller of Examinations, University of Mumbai, and the learned Special Public Prosecutor had given no objection. He submitted that in view of what is stated by the prosecution witness No.1 in paragraph 9 of the cross-examination, Circular dated 11th July 2002 was very relevant. He, therefore, submitted that the learned Special Judge has committed an error by rejecting the Application.

5. I have considered the submissions. There is nothing on record to show that the case of the Applicant on the basis of the Circular dated 11th July 2002 was put to any prosecution witness. It is not the case made out by the Applicant in his application at Exh.92 that any question was attempted to be asked to D.W.4 Patil on the basis of the said Circular. The first prayer made in the Application is very vague. The Applicant has not stated the name of the witness to whom the Applicant intends to put questions for proving the said Circular. In view of the nature of application and the prayer made therein, I

find no fault with the learned Special Judge if the main prayer was rejected.

6. The prayer in the alternative was for issuing the witness summons to the Controller of Examinations. Merely because no objection was given by the Special Public Prosecutor cannot be a ground to assail the order passed below Exh.92. Even if no objection was given by the Special Public Prosecutor, it was for the learned Special Judge to examine the matter on merits and pass appropriate order. At no stage, the Applicant has relied upon the Circular dated 11th July 2002. Therefore, the learned Special Judge was justified in rejecting the prayer for issuance of witness summons. There is no merit in the Revision Application and the same is rejected.

Judge.